REMARKS

Based on the above amendment and the following remarks, applicant respectfully submits that all the pending claims are in condition for allowance.

Status of the Claims

Claims 5-29 were pending. Claims 5-13 are canceled. Claim 14 is amended. Claims 30-37 are added. After this amendment, claims 14-37 are pending.

Swearing Behind Weisberg

Applicant hereby submits an affidavit and corroborating evidence pursuant to 37 CFR 1.131 showing that applicant's invention was reduced to practice before the effective date of Weisberg. Consequently, Weisberg cannot serve as the basis of a prior art rejection.

IDS

With this response, applicant also submits an information disclosure statement with documents evidencing industry recognition and respect for applicant's advertising and distribution inventions.

Rejections Under 35 USC § 103

Claims 5-29 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Pat. 5,931,901 ("Wolfe") in view of U.S. Pat. 6,351,736 ("Weisberg"). Applicant first notes that in view of the accompanying Rule 1.131 affidavit and evidence, Weisberg cannot serve as the basis of a prior art rejection. Moreover, applicant respectfully disputes the examiner's interpretation of Wolfe. As a result, applicant respectfully traverses these rejections because the prior art fails to teach or suggest all the claim limitations.[1] However, in view of the discussions during the examiner interview, applicant proposes certain claim amendments for the examiner's consideration. Applicant submits that pending claims 14-37 are in condition for allowance.

Among other things, independent claim 14 recites "a web site having audio files available for download by web site visitors ...". Wolfe discloses the delivery of program content and

---

[1] MPEP § 2142 ("To establish a prima facie case of obviousness, three basic criteria must be met. ... the prior art reference (or references when combined) must teach or suggest all the claim limitations.").

advertising using a streaming technique.[2] Streaming is a real-time broadcast type of information transfer in which specialized software is used on both the transmitting and receiving ends to control the information delivery so that the server sends only the desired portion of the program, and sends it only when that portion of the program is desired.[3] At the receiving end, the program data is not stored on disk – rather, it is discarded after use by the player software.[4] Thus applicant maintains that any program content existing on the user's computer in Wolfe is extremely transient and in any event it is a very small portion of the whole, thus failing to satisfy the recited claim limitation.

In the office action, the examiner acknowledges that Wolfe fails to explicitly disclose downloading and storage on a user device, but argues that such a disclosure is implicit in Wolfe's teaching of security measures to prevent copying.[5] Applicant respectfully disagrees that any such teaching is implicit in the use of such security measures. To the contrary, that is precisely what those security measures are designed to prevent. A protective or preventative feature of a reference cannot be baldly characterized as the teaching of the absence of such a feature. [6]

The examiner further cites Weisberg as teaching "a similar method" with file downloading and storage. As previously explained, Weisberg fails to qualify as prior art. For at least the foregoing reasons, applicant maintains that independent claim 14 and its dependent claims 15-23 are allowable over the cited art.

---

[2] Wolfe at c3ℓ1-3 ("The completed data stream is then delivered to the subscriber in a single, inseparable stream of data packets over the Internet.").

[3] See, e.g., Larry Bouthillier, "Streaming vs. Downloading Video: Understanding the Differences", http://www.streamingmedia.com/article.asp?id=8456, July 22, 2003, p.2 ("The control messages also include user actions like play, pause, stop, and seeking to a particular part of the file. ... the server sends video data only as it's needed and at just the rate it's needed ... The video file is not stored on the viewer's computer. The video data is played and then discarded by the media player")

[4] Id. ("The video file is not stored on the viewer's computer. The video data is played and then discarded by the media player")

[5] Final OA of 1/28/08, p4 ("While Wolfe does not explicitly disclose ... [he] at least implies that it has been stored on the user device.")

[6] See MPEP § 2143.01(I) ("The prior art must suggest the desirability of the claimed invention") and (V) ("The proposed modification cannot render the prior art unsatisfactory for its intended purpose").

Independent claim 24 recites "downloading an audio file with an audible advertisement from a web site to a computer". New independent claim 30 recites "making the combined files available on an Internet website for download by end users". New independent claim 35 recites "making the combined audio file accessible for download by multiple users via a computer network". In each case, the use of the term 'download' distinguishes the delivery technique from that disclosed by Wolfe. As previously discussed, Wolfe provides programming content using a streaming technique. Those skilled in the art recognize that these delivery techniques are quite distinct. For at least the foregoing reasons, applicant maintains that independent claims 24, 30, and 35, along with dependent claims 25-29, 31-34 and 36-37 are allowable over the cited art.

Conclusion

In the course of the foregoing discussions, applicant may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art that have yet to be raised, but which may be raised in the future. The examiner is encouraged to contact the undersigned attorney if a telephonic discussion might prove helpful.

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Krueger Iselin LLP Deposit Account Number 50-4305/1002-001.00/HDJK.

Respectfully submitted,

Daniel J. Krueger
Reg. No. 42,771
Attorney for Applicant
Krueger Iselin LLP
P.O. Box 1906
Cypress, TX 77410-1906
Ph: (713) 568-1888